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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,926	08/23/2001	Thomas Welsh	195-01	1408

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EXAMINER	
HO, THOMAS Y	
ART UNIT	**PAPER NUMBER**
3677	

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/935,926	WELSH ET AL.	
	Examiner	Art Unit	
	Thomas Y Ho	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 May 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *3 and 5-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *3 and 5-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *28 September 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

Claims 3 and 5-7 are pending. Claims 1-2 and 4 have been withdrawn or cancelled.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 3, 5, and 8 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-3 and 9-10 of prior U.S. Patent No. 6527307. This is a double patenting rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 5-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 3, Applicant recites "the first path is linear". Applicant's pawl does not move in a linear path because the pawl 140 rotates, traveling in arcs. By Applicant's own admission (pg.4, 1st paragraph), the movement of the pawl is only "substantially linear" and not linear, as

recited in claim 3. Applicant further acknowledges that the pawl moves "with a very slight downward rotation of the forward end of the pawl" and "with a slight rotation of the forward end of the pawl". Because the pawl rotates the motion of the pawl cannot be linear. It should be noted that the assembly in Applicant's patented invention US6527307, the path of the pawl may be linear, but this is not the case for the instant application because of the different shapes of the grooves which the pins on the pawl must follow.

As to claim 5, Applicant recites "the second path is linear". Applicant's pawl does not move in a linear path because the pawl 140 rotates, traveling in arcs. By Applicant's own admission (pg.4, 1st paragraph), the movement of the pawl is only "substantially linear" and not linear, as recited in claim 3. Applicant further acknowledges that the pawl moves "with a very slight downward rotation of the forward end of the pawl" and "with a slight rotation of the forward end of the pawl". Because the pawl rotates the motion of the pawl cannot be linear.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3 and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Schlack US5201557.

As to claim 3, Schlack discloses, wherein the first path is linear.

As to claim 5, Schlack discloses, wherein the second path is linear.

As to claim 6, Schlack discloses, further comprising a carriage 80, the carriage being mounted for linear motion within the housing 110, the pawl being mounted within the carriage.

As to claim 7, Schlack discloses, further comprising connection means 59/61 for rotatably connecting the lever handle and the pawl.

As to claim 8, Schlack discloses, a linear compression latch comprising: a housing 110; a lever handle 50 rotatable by an operator between a first position and a second position, the lever handle being mounted in the housing; a pawl 94/96 mounted for substantially linear motion, the pawl being actuated by rotation of the lever handle and traveling substantially linearly between an open position to a closed position as the lever handle is rotated between the first position to second position; wherein the pawl is mounted to travel between the open position along a first path and an intermediate position; and wherein the pawl is mounted to travel in a second path in a direction substantially perpendicular to the first path between the intermediate position and the closed position (compare Figures 3 and 5).

Claims 3 and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Tedesco US4858970.

As to claim 3, Tedesco discloses, wherein the first path is linear (compare Figures 8 down to 6).

As to claim 5, Tedesco discloses, wherein the second path is linear (compare Figures 6 to 5).

As to claim 6, Tedesco discloses, further comprising a carriage 34/34, the carriage being mounted for linear motion (compare Figures 2-6) within the housing, the pawl being mounted within the carriage.

As to claim 7, Tedesco discloses, further comprising connection means 68/68 for rotatably connecting the lever handle 52 and the pawl 28.

As to claim 8, Tedesco discloses, a linear compression latch comprising: a housing (aircraft member); a lever handle 52 rotatable by an operator between a first position (see Figure 8) and a second position (see Figure 2), the lever handle being mounted in the housing; a pawl 28 mounted for substantially linear motion, the pawl being actuated by rotation of the lever handle and traveling substantially linearly between an open position to a closed position as the lever handle is rotated between the first position to second position; wherein the pawl is mounted to travel between the open position (see Figure 8) along a first path and an intermediate position (see Figure 7); and wherein the pawl is mounted to travel in a second path in a direction substantially perpendicular to the first path between the intermediate position and the closed position (see Figures 5 and 2).

Response to Arguments

Applicant's arguments, see Amendment (pg. 2), filed 5/20/04, with respect to claims 3 and 5-8 have been fully considered and are persuasive. The rejection of claim 8 under 35 U.S.C.

112, 2nd paragraph has been withdrawn. However, the same rejection remains for claims 3 and 5-7.

Applicant's arguments, see Amendment (pg. 4), filed 5/20/04, with respect to the rejection(s)of claim(s) 3 and 5-8 under Bourne US5984382 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Schlack US5201557 in view of Tedesco US4858970.

Applicant previously argued (see Appeal Brief, pg. 6, filed on 7/21/03) that Schlack US5201557 fails to disclose all of the limitations because the claim "requires that the second path of the pawl be substantially perpendicular to the first path." The rejection under Schlack was withdrawn due to this narrow interpretation of substantially, because Schlack does not disclose perpendicular first and second paths. However, in the most recent response (Amendment, pg. 3-4, filed 5/20/04), Applicant now argues that the term "substantially" has a broad interpretation. Applicant's pawl 140 travels in arcuate paths (by Applicant's own admission, see pg. 4) due to the different shapes of the slots in which the pins of the pawl travel. It is not possible for Applicant's pawl to travel linear paths, nor is it possible that the pawl travel between two perpendicular paths because arcuate paths are not in any way linear or perpendicular to one another. Because Applicant now construes the term "substantially" linear and "substantially" perpendicular to cover non-linear and non-perpendicular movements, Schlack anticipates the claims. Although the pawl 94/96 in Schlack does not move in absolutely perpendicular paths, the pawl does move in "substantially" perpendicular paths between the positions of Figures 3 and 5.

Applicant previously argued (see Appeal Brief, pg. 6-7, filed on 7/21/03) that the Tedesco US4858970 fails to disclose all of the limitations because the assembly "causes the hook 28 to move in a counterclockwise direction". Further, Applicant argues "the motion that the Examiner characterizes as linear is described by Tedesco as a rotational motion...There is no sequence of two linear motions as perceived by the Examiner". While the pawl 28 in Tedesco has rotational motion, the motion is clearly "substantially linear" and the paths are "substantially perpendicular". By Applicant's own admission (see Amendment, pg. 4, filed on 5/20/04), a pawl 140 can move in rotational motion and still meet the limitation of moving "substantially" linearly. Applicant acknowledges that the term "substantially" does not require that the movement be absolutely linear or absolutely perpendicular. Therefore, Tedesco anticipates the claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Y Ho whose telephone number is (703)305-4556. The examiner can normally be reached on M-F 10:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J Swann can be reached on (703)306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TYH

ROBERT J. SANDY
PRIMARY EXAMINER